Patent **Attorney Docket No.: 12988/19**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT	:	Daniel J. Guinan
SERIAL NO.	:	09/575,088
FILED	:	May 19, 2000
FOR	:	MULTI-PARTY ELECTRONIC TRANSACTIONS
GROUP ART UNIT	:	3624
CONFIRMATION NO.	:	9765
EXAMINER	:	Thu Thao Havan

PRE-APPEAL BRIEF REQUEST FOR REVIEW

MAIL STOP: AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

The above-identified application having been finally rejected in the Office Action mailed April 28, 2006, the Applicants respectfully submit this Pre-Appeal Brief Request for Review, with a Petition for Extension of Time, within four months of the mailing date of the Office Action.

Applicant requests the review for the reason(s) stated on the attached sheets. No amendments are being filed with this request.

A Notice of Appeal is being submitted concurrently herewith.

REMARKS/ARGUMENTS

In the April 28, 2006 Office Action, the Examiner rejected claims 44-61 under 35 U.S.C. § 102(e) as anticipated by Pallakoff et al. (USP 6,269,343). In making this rejection, as discussed in particular in the Advisory Action (see continuation sheet), the Examiner has focused on the claim language "good or service" in the present application; identified the unit price of soccer balls in Pallakoff as being a "service"; noted different unit prices based on different quantities of the same good (soccer balls); and concluded that Pallakoff teaches two different levels of service, thereby meeting the language of the claims.

In order to provide this reading, the Examiner has to define "service" as being the price of a "good". In the context of Pallakoff, then, a "good" is a soccer ball and a "service" is the price of a soccer ball. Thus, according to the Examiner's reading of the claims of the present application, someone offering "a good or service" could offer either a soccer ball (a good) or a price of a soccer ball (a service).

Applicant submits that it makes no sense to offer just a price of a good. One could offer a good at a price; but in the Examiner's reading of Pallakoff, that would be the same as offering "a good and service," not a good or service. Moreover, one would not simply offer a good without specifying a quantity and a price. One would not simply offer a soccer ball; one might offer a soccer ball at $15 each or $10 each, depending on quantity (Pallakoff, col. 8, lines 33-40). But it would be the good that would be offered. The price would be part of the offer; it would not be a separate service.

The relevant language from each of the independent claims of the present application is the creation of a plurality of hierarchical offers, and the "wherein" clause at the end of each independent claim, as follows:

. . . a plurality of hierarchical offers based on the plurality of atomic offers, the plurality of hierarchical offers including:

at least one first-level offer including at least a first one of the plurality of atomic offers, and

at least one second-level offer including the first-level offer and at least a second one of the plurality of atomic offers not included within the first-level offer;

* * *

wherein the first one of the plurality of atomic offers is an atomic offer for **a first good or service**, and the second one of the plurality of atomic offers is an atomic offer for **a second good or service different from the first good or service**.

There are two problems with the Examiner's reading:

1) a) Per the introductory discussion, Applicant respectfully submits that the Examiner has read out of the claims the term "offer". The claims recite one more "offers" for a "good" or "service". An "offer" implies a quantity or amount at a price. If the service is the price, as the Examiner posits in the Advisory Action, then there is no offer.

b) If the service were the price of the good, the claim language would not make any sense. Applicant submits that the ordinarily skilled artisan would not parse the term "good or service" as the Examiner has done, where the "good" is a ball, and the "service" is the unit price of the ball, so that the "offer" for the service is the unit price of a good. .

2) In Pallakoff, when a seller offers 250-499 soccer balls at $15 each and 500-700 soccer balls at $10 each, a buyer purchasing 272 balls would pay $15 per ball, and a buyer

purchasing more than 572 balls would pay $10 per ball. *See* Pallakoff, col. 8, lines 33-40. Thus, a buyer purchasing more than 500 balls does not get 499 balls @ $15 (what the Examiner would call the first level offer) and 173 balls @ $10 (what the Examiner would call the second level offer). However, the claims recite that the second level offer **includes** the first level offer. As Applicant stated in the last response, in the Examiner's reading, the second level offer in Pallakoff does not include the first level offer, because the price of the second level offer is different from the price of the first level offer.

Pursuant to the foregoing discussion, Applicant respectfully submits that claims 44-61 are patentable over Pallakoff.

The Examiner is invited to contact the undersigned at (408) 975-7500 to discuss any matter concerning this application.

The Office is hereby authorized to charge any additional fees or credit any overpayments under 37 C.F.R. §1.16 or §1.17 to the deposit account of Kenyon & Kenyon, deposit account no. **11-0600**.

Respectfully submitted,

KENYON & KENYON LLP

Dated: August 28, 2006

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